**TAN KAY POH**

**v.**

**TAN SURIDA & NEO KAY CHEONG**

HIGH COURT, SINGAPORE
CHAO HICK TIN JC
[DIVORCE PETITION NO. 2256/87]
3 DECEMBER 1988

***FAMILY LAW:*** *Divorce - Decree nisi granted - Uncontested divorce - Co-respondent who committed adultery with wife of petitioner not liable for damages.*

The petitioner had claimed damages against the co-respondent who had committed adultery with the respondent while she was married to the petitioner. A decree *nisi* to dissolve the marriage had been granted.

**Held:**

**[1]** The right of a petitioning husband to sue a co-respondent who had committed adultery with the respondent was abolished by the Women's Charter. In view of the conduct of the husband who had ill - treated his wife prior to her adulterous relationship with the co-respondent, it was found that the co-respondent was not responsible for the marital problems. Thus, the co-respondent was not liable to pay the costs.

*[Order accordingly.]*

**Cases referred to:**
*Scott v. Scott & Anor. [1957] 1 All ER 63*
*Pritchard v. Pritchard & Anor. [1966] 3 All ER 601*
*Butterworth v. Butterworth & Anor. [1920] Probate 126*

**Legislation referred to:**
Law Reform (Miscellaneous Provisions) Act 1970 [UK], s. 4
Women's Charter [Sing], ss. 85, 88(3)
Matrimonial Proceedings Rules 1981 [Sing], r. 46(3)

**Other sources referred to:**
*Halsbury's Laws of England*, 4th Edn., Vol. 13, para. 970
*Rayden on Divorce* (14th Edn.) Vol. I, p. 1392

*For the petitioner - Loganathan*
*For the respondent - Anita Henry*

**JUDGMENT**

**Chao Hick Tin JC:**

On 7 July 1988 I granted a decree *nisi* on an uncontested basis to dissolve the marriage solemnised on 1 August 1975 between the petitioner (husband) and the respondent (wife) on the ground that the marriage had irretrievably broken down in that the respondent had committed adultery with one Neo Kay Cheong the co-respondent, and the petitioner had found it intolerable to live with respondent. I also ordered that all the ancillary matters, including a prayer that the co-respondent be condemned in damages, be adjourned to be heard in chambers.

The first issue that is now raised before me is whether, under the provisions of the Women's Charter as they now stand, the petitioner is entitled to claim for damages from the co-respondent on account of the adultery committed by the respondent with the co-respondent.

The position in England before 1971 was quite clear. A husband could claim for damages against a co-respondent - see *Scott v. Scott & Anor*. [1957] 1 All ER 63 and *Pritchard v. Pritchard & Anor*. [1966] 3 All ER 601. This remedy was not available to the wife as it was based upon the premise that the husband had a quasi-proprietary interest in his wife and her services. The principles governing damages were dealt with in *Butterworth v. Butterworth & Anor*. [1920] Probate 126 where it was held that damages should merely be compensatory and not exemplary or punitive.

The position in England has, however, been altered since 1971. Section 4 of the English Law Reform (Miscellaneous Provisions) Act 1970 provides that

> after this Act comes into force no person shall be entitled to petition any Court for, or include in a petition a claim for, damages from any other person on the ground of adultery with the wife of the first mentioned person.

By virtue of this section, no claim for damages against a co-respondent may now be made in England by a husband in a petition for divorce.

Marriage law in Singapore also underwent drastic changes in 1980. Prior to 1980, divorce was granted only if one spouse proved that the other spouse had committed a matrimonial offence eg. adultery, cruelty or desertion. There was then an express provision in the Women's Charter (s. 104), which expressly permitted a husband in a petition for divorce or for judicial separation to claim damages from any person on the ground of his having committed adultery with the wife of such a petitioner. That provision also empowered the Court to ascertain the damages payable. However, in 1980, by an amendment to the Women's Charter, which came into force on 7 August 1980, divorce is no longer based on fault but on the concept of "irretrievable breakdown." This may be established only by proof of one or more of five facts set out in s. 88(3) of the Women's Charter. By the same amendment Act, the previous s. 104 was also repealed. It follows that the right of a petitioning husband to sue a co-respondent for damages has been abolished. Counsel for the petitioner argued that, notwithstanding the repeal of the previous s. 104, the Court still has the power to award damages because of s. 85 of the Women's Charter which reads as follows:

> Section 85: Subject to the provisions of this part, the Court shall in all suits and proceedings hereunder act and give relief on principles which in the opinion of the Court are, as nearly as possible, conformable to the principles on which the High Court of Justice in England **acts and gives** relief in matrimonial proceedings.

In my opinion this argument must fail. Section 85 imports, subject to the express provisions of the Women's Charter, principles on which the English Court acts and gives relief. Note the present tense of the words "acts" and "gives" in that section. It only imports the prevailing principles or rules applicable in England. English Courts now no longer grant damages on a petition for divorce on account of adultery.

A further argument relied upon by Counsel for the petitioner is based on r. 46(3) of the Matrimonial Proceedings Rules 1981. Rule 46(3) provides that

> where a party who has been ordered to lodge damages in Court fails to do so in accordance with the order, the party in whose favour the order was made may apply to the Judge at any time to vary the order ...

Counsel argued that this rule impliedly preserves the right of a petitioner to sue for damages against a co-respondent. I do not accept that argument. Rule 46(3) is not a substantive provision. It is a provision to facilitate enforcement of orders made by the Court. Whether a petitioning husband may still sue for damages depends on the provisions in the Women's Charter itself. The rules cannot give such a right where none exists under the charter. I am conscious that this identical provision was also found in the repealed Divorce Procedure Rules 1950. But it does not fall on me in the present proceedings to determine in what circumstances, if at all, will the Court order the lodgment of damages in Court under r. 46(3).

I turn next to the claim for costs against the co-respondent. The law on the question of costs in circumstances such as the present case is set out in *Halsbury's Laws of England*, 4 Edn., Vol. 13, para. 970 as follows:

> A co-respondent, against whom adultery is established, may be ordered to pay the whole or any part of the costs of the proceedings; but in exercising its discretion as to the costs which a co-respondent may be ordered to pay, the Court may have to consider whether in fact the co-respondent was responsible either for the break down of the marriage or for the litigation.

A similar statement of the law is contained in p. 1392 of *Rayden on Divorce* (14th Edn.) Vol. I.

The petitioner had proved to my satisfaction that the respondent and the co-respondent committed adultery on 9 October 1987: thus the decree *nisi* granted on 7 July 1988. However, in an affidavit filed on 10 November 1988 by the respondent in relation to the ancillary matters, the respondent stated that there was unhappiness between the petitioner and the respondent even before the respondent was introduced to the co-respondent as the petitioner wanted to "cage-up" the respondent. The parties often quarrelled and the respondent had in fact left the matrimonial home on three occasions between 1985 and 1987. The respondent also stated that her relationship with petitioner was strained even more when she started to work in April 1987. The co-respondent was then a good friend of the family. The respondent said the co-respondent "had nothing to do with the strained relationship between the petitioner and (the respondent) and (the co-respondent) in fact sought to reconcile the petitioner and (the respondent) whenever (the respondent) left the matrimonial home." - The last straw was an incident which occurred on 16 September 1987 when the petitioner and the respondent quarrelled over the respondent working overtime and he accused her of having extra-marital affairs and chased the respondent with a chopper. Feared for her life, the respondent left the matrimonial home and resolved never to return. The respondent said that the "marriage was dead long before the adultery" and thus she allowed the petition to proceed on an uncontested basis. No affidavit in reply has been filed by the petitioner to dispute what is said by the respondent. Neither has the petitioner made any request to me for time to file an affidavit in reply. In the circumstances and on the facts now before me, I do not think I ought to condemn the co-respondent in costs.

In the result I am not granting any order in respect of both the ancillary prayers of the petitioner.

Also found at [1989] 1 CLJ 879